

REMARKS

This responds to the Office Action mailed on July 18, 2005, and the references cited therewith.

Claims 21, 24, 26, 32, 34, 35, and 44 are amended; as a result, claims 18-52 are now pending in this application.

Claims 21, 24, 32, 34, and 44 were amended to correct typographical errors.

As in initial note, to the extent that any cited reference relied on can be overcome as provided under 37 C.F.R. § 1.131, Applicants reserves the right to swear behind these references as provided under 37 C.F.R. § 1.131.

Specification Objections

The abstract of the disclosure was objected to as containing purported merits or speculative applications. Applicants have amended the abstract and now believe that it is in allowable form. Thus, Applicants respectfully request withdrawal of the objection.

Claim Objections

Claim 21 was objected to as containing a typographical error. Applicants have amended claim 21 to correct the typographical error.

§103 Rejection of the Claims

Claims 18-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Woolston (U.S. 5,845,265) in view of Nahan (U.S. 5,664,111). Applicants respectfully disagree with this rejection for the reasons set out below.

Concerning Claims 18, 26, 35, and 44

As an initial note, Applicants recognize that the Office Action apparently only relies on one reference, namely Woolston, to demonstrate disclosure, teaching, or suggestion of the claimed elements. Regardless of this fact, Applicants respectfully submit that no *prima facie* case of obviousness presently exists because the cited portions of Woolston do not disclose, teach, or suggest, all elements of independent claims 18, 26, 35, and 44.

The Office Action concedes that there is no disclosure (and accordingly no teaching, or suggestion) of “a bid validation means for examining a bid” as presently recited in claim 18, and similarly recited in claims 26, 35, and 44. However, the Office Action, relying on Woolston, then goes on to contend that “it would be obvious of one of ordinary skill in the art at the time the invention was made to use the transaction clearing means as a way of validating a bid.” (Office Action at page 4). However, the “clear charge” step as described in Woolston apparently occurs after the bidding process is complete and a sale transaction is imminent. (Woolston at col. 12, lines 20-49). So, it may be more correct to label the “clear charge” step a payment validation step, instead of a bid validation step. Thus, Applicants submits that this is an unsupported assertion.

Further, Applicants cannot find in the cited portions of Woolston “a posting means for posting to a computerized merchandise catalog ... the posting means being available to add a lot for auction during an auction of another lot” as presently recited in claim 18, and similarly recited in claims 26, 35, and 44.

Thus, because the cited portions of the references do not disclose, teach, or suggest all of the subject matter of claims 18, 26, 35, and 44, Applicants respectfully request withdrawal of this basis of rejection of these claims.

Furthermore, Applicants respectfully submit that the above-identified assertion amounts to a form of Official Notice, which is timely traversed herein under M.P.E.P. § 2144.03, and if the Examiner is aware of a reference providing support for the assertion, citation of such reference is respectfully requested. If a reference cannot be provided, Applicants submit the assertion is formed on personal knowledge and Applicants request that an affidavit is provided, as required by 37 C.F.R. § 1.104(d), or removal of this 35 U.S.C. § 103 basis of rejection.

Concerning Claims 20, 28, 37, and 46

The Office Action took official notice of the use of a “Dutch auction, standard auction, progressive auction, and buy or bid auctions when auctioning goods or services.” Applicants respectfully traverse this official notice and request the Examiner to provide a reference that describes such an element. Absent a reference, it appears that the Examiner is using personal

knowledge, so the Examiner is respectfully requested to submit an affidavit as required by 37 C.F.R. § 1.104(d)(2).

Concerning Remaining Dependent Claims

The remaining dependent claims depend on independent claims 18, 26, 35, and 44 respectively, and accordingly incorporate the limitations of each of these independent claims. These dependent claims are accordingly believed to be patentable for the reasons stated herein. Thus, Applicants respectfully request withdrawal of this basis of rejection for these claims.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4042 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

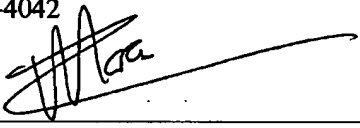
Respectfully submitted,

ALAN S. FISHER ET AL.

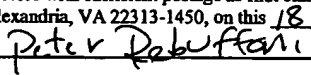
By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
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Date 01/17/06

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18 day of January, 2006.


Name


Signature